

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO
01-CV-12257-PBS AND 01-CV-339

)
) MDL No. 1456
)

) CIVIL ACTION: 01-CV-12257-PBS
)

) Judge Patti B. Saris
)

) Chief Magistrate Judge Marianne B. Bowler
)

MOTION OF PLAINTIFFS FOR LEAVE TO FILE REPLY BRIEF

Pursuant to Local Rule 7.1(B)(3), plaintiffs hereby request leave to file a reply to Defendants' Opposition to Plaintiffs' Emergency Motion to Reset Certain Dates Pertaining to Class Certification. In support of this motion, plaintiffs state as follows:

1. On November 12, 2004, plaintiff filed an Emergency Motion to Reset Certain Dates Pertaining to Class Certification. Defendants filed a memorandum in opposition to this motion on November 15, 2004.
2. Plaintiffs now seek leave to file a three-page Reply Brief in support of its Motion to Reset Certain Dates Pertaining to Class Certification.
3. The motion is necessary to correct certain misstatements that are the premise of defendants' opposition. In particular, defendants' claim that there was an agreement to not turnover expert reliance data, thus the three-week delay in defendants' production of such material is justified. As explained in the reply, the exhibits cited in defendants' opposition reveal that plaintiffs promptly identified

all reliance materials when the moving class papers were filed. This data, which was from disks defendants' themselves produced, was in defendants' possession on the day the opening class papers were served. Defendants thus had the full time in the briefing schedule to respond. Defendants on the other hand still have not completed production of reliance materials and the bulk of it was produced three weeks after their opposition papers were served. These circumstances and the prejudice flowing from them is further explained in the Reply.

Wherefore, plaintiffs respectfully request that the Court grant it leave to file a reply to correctly explain the circumstances and prejudice caused by defendants' misconduct.

DATED: November 16, 2004

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **MOTION OF PLAINTIFFS FOR LEAVE TO FILE REPLY BRIEF** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on November 16, 2004 via Verilaw to Defendants.

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